

Strasbourg, 20 January 2016

## CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

**Questionnaire for the preparation of the CCJE Opinion No. 19 (2016):**

**“The role of court presidents”**

### ANSWERS OF AUSTRIA

*Please in your answers do not send extracts of your legislation but describe the situation in brief and concise manner.*

*Comments on what is also happening in practice, and not only on point of law, will be much appreciated.*

#### Introduction

The first three sections deal with presidents of first instance courts and presidents of courts of appeal. Please for each question, if and when applicable, make a distinction between the two positions.

The last section specifically deals with the president of the Supreme Court (e.g. Court of Cassation, Courts of last resort, but not with the Constitutional Courts or bodies with similar authority).

The Bureau and the Secretariat of the CCJE thank you very much for your cooperation and contributions.

#### General Remarks:

In Austria there is a four level court system in the so-called “ordinary judiciary” which is in charge of civil and criminal cases, and separately there are 11 first instance administrative courts and one supreme administrative court which is the second and last instance.

In the ordinary judiciary there are 116 Bezirksgerichte (“district courts”), which deal as first instance courts only, 20 Landesgerichtes (“court of appeal”), which deal with special types of cases as first instance courts and with appeals against the decisions of the Bezirksgerichtes as courts of appeal, 4 Oberlandesgerichtes (“Higher Courts of Appeal”) which deal as courts

of appeals against decisions of the Landesgerichte (except remedies in certain criminal cases), and 1 Supreme Court who is the last instance in certain (important) civil and criminal cases.

The following answers demonstrate the situation regarding the ordinary judiciary. The administrative courts are dealt with separately.

## 1. Selection, removal, term of office, decision making process

- 1.1 How many presidents of first instance courts and how many presidents of the court of appeal there are in your country?

Each of the 140 courts has a president. There are 117 courts (116 Bezirksgerichte and 1 special Landesgericht) which deal with first instance cases only, 4 courts which deal with appeal cases only (Oberlandesgerichte) and 19 courts which deal with both (Landesgerichte).

- 1.2 Who appoints (e.g. Judicial Council, Ministry of Justice, Higher court, Parliament, Agency etc.) the presidents of the courts? (Please remember, if applicable, to make a distinction between the presidents of the courts of first instance and of the courts of appeal. Is it possible that presidents of the courts are appointed from other legal professionals than those who are already judges?)

The post of a president of court is handled like every other post of a judge. It is one of the different types of posts within the judiciary. There is the post judge of the Court X, or the post President of the Court X or Vice-President of the Court X. At the level of the four Oberlandesgerichte there are also posts of President of a Panel of the Oberlandesgericht X. Like all other posts of a judge one has to apply for this specific position, one gets appointed for this position and by that one has the guarantee of permanent tenure in the same way as a president of court x or as a judge of court x. It is no possible to change from judge of court x to president of court x or the other way around without an appointment. The rules for the appointment are the same for all positions. Judges are appointed by the president of the state, but the Constitution permits that the President of the State delegated this task to the Minister of Justice. In fact the President delegated the right to appointed for all judges of the Bezirksgerichte and the Landesgerichte (except the presidents and vice-presidents of the Landesgerichte) to the Minister of Justice. The Minister of Justice also plays a role regarding the appointment by the president of the state, because the president needs a proposal of the government.

- 1.3 Do the presidents get a “confidence vote” (after or before their appointment) from the other judges of the court?

No there is not such a “confidence vote”

- 1.4 Please describe briefly the selection procedure for presidents of the courts.

It is the same procedure like every other position of a judge (see above 1.2.). One of the selection criteria is special knowledge and abilities which are in addition to the ordinary abilities, which a judge should have to manage a court. (see 1.5. below)

- 1.5 What kinds of qualifications (e.g. specific training, previous specific judicial position, seniority, managerial experience etc.) are required to become president? (Please

explain, for example, if training is mandatory or on a voluntary basis, is there training at all, and how much it affects the choice of the president).

In addition to the abilities, which each judge should have, special abilities, which are necessary to manage a court should exist for candidates who apply for the position of a president of a court. There are special training courses in these fields. They are not mandatory so far, but of course it is an advantage to have been trained in this regard. Another possibility to gain knowledge is that one had worked as assigned judge to a president, having a part time commitment to fulfil managerial tasks.

- 1.6 Are presidents selected among the judges of the same court, or they may or must have served in a different court before taking the position as court president.

There is no rule some come from the same court, e.g. former vice-presidents of the same court, some come from other courts., be it courts of the same level or from a higher level.

- 1.7 Can the candidates, who applied for the position but did not get it, challenge the decision before a court/tribunal?

No this is not possible.

- 1.8 How often does it happen? (Please give a percentage based on data available or on your personal knowledge).

None (Not possible see 1..7)

- 1.9 Is additional training in management, or in other subjects, required after the judge has been selected as court president?

No this is not mandatory, but there are such trainings. The training courses mentioned in 1.5. are open for every judge and could also be attended by presidents, after they have been appointed.

- 1.10 What is term of office for the president of court (please explain if there are limitations)?

The position of a president is the same as every other position of a judge, this means he/she stays in this positions till he/she reaches the retirement age.

- 1.11 How many times the same position of court president can be hold by the same person?  
See 1.10.

- 1.12 Which is the process to confirm presidents in their position (e.g. assessment of the first term served and then renewal)?

This is not necessary /possible (see 1.10.)

- 1.13 Under which circumstances can presidents be removed from their office before the expiration of their term?

Under the same circumstances like every judge this is the judgement of the disciplinary court or a judicial decision of in-capability (e.g. serious illness)

1.14 Who is in charge of the removal procedure, and how it works?

Like every other judge the competent disciplinary court .

1.15 Can the president removed challenge the decision before a tribunal/court?

The decision is a court decision. The first instance judgment can be appealed at the second instance disciplinary board, which is a chamber of the Supreme Court

1.16 Are the decisions by the presidents shared/negotiated with the other judges or "boards" within the courts?

The management tasks of the court are divided into two groups. One group is entrusted to the presidents of court alone. In these tasks the president is part of a hierarchical system, which runs from the minister of justice via presidents of the Higher Courts of Appeal via presidents of the Court of Appeal down till the presidents of the district courts.

The other groups is entrusted to the Personalsenate, which is a body composed of the President of the Court, the oldest Vice-president and three judges elected by their peers. Such bodies exist at the second level courts (Courts of Appeal, Landesgerichte) which are in charge of the Court of Appeal and the first level courts (District Courts, Bezirksgerichte) in its district, at the Higher Courts of Appeal (Oberlandsgerichtetes) and at the Supreme Court. These bodies are responsible of giving an opinion on appointing of judges to a certain position, distribution of cases , and evaluation of judges. The bodies are independent and not in an hierarchical subordination of the minister.

1.17 Do the local lawyers association or any other authority play a role in the decision making process carried out by the court's president?

No

1.18 Are the organizational decisions taken by the presidents supervised by any other authority (e.g. Ministry of Justice, Judicial Council, Supreme Court, other)?

The presidents, when they act outside the Personalsenat (see 1.16) are supervised by the ministry and the presidents who have higher positions in the hierarchy.

1.19 Is there any extra remuneration for presidents, and how much is it in percentage of the regular judge's salary in the same court?

Yes there is an extra remuneration, which is very small in the first level courts, whilst the presidents of the second level courts get more remuneration then the ordinary judges of the third level. The president of the Higher Courts of Appeal and the president of the Supreme Court have a high special remuneration.

1.20 Please add any critical issue or further information that you consider relevant for this section.

## 2. Tasks, functions, relations

2.1 Are the presidents of the courts adjudicating cases as the other judges or they have a reduction of their caseload fixed by the law or by practice?

Presidents have a reduction of caseload depending on the size of the court, which regarding presidents of first level courts is fixed by an agreement between the judges association and the ministry of justice and regarding the second and third level fixed by law. Normally the four presidents of the Higher Courts of Appeal don't adjudicate at all or

only in a very limited way. At this level the core of the management tasks in the judiciary is concentrated.

- 2.2 Are the presidents involved in the selection and recruitment of the judges? (Please make a distinction, if applicable, between full-time/permanent judges, temporary judges, lay judges if it applies in your respective jurisdiction).

The training of candidates to become a judge is organised by the presidents of the Higher Courts of Appeal, which sometime is delegated to the presidents of Courts of Appeal. The presidents of Higher Courts of Appeal propose to the minister of justice a list of persons, who after having passed practical and theoretical training and passed an exam, should be appointed as candidate to become a judge. If a judge of his/her court applies for another position at another court or as president or vice-president the president of the court, in which this judge works gives a statement about the performance and abilities of this judge.

- 2.3 Are the presidents involved in the selection and recruitment of the court staff?

The court staff of the first, second and third level courts are recruited by the presidents of the Higher Courts of Appeal. Sometimes the presidents of the lower courts are more or less involved. The most important decision in this regard, which is the number of staff and its distribution to the four districts is reserved to the minister of justice.

- 2.4 Do the presidents assess the work of the judges of the court? (If this is the case, please describe how often does it happen, what kind of procedure is followed, what are the consequences of this assessment, and if the assessment can be challenged by the judges before a tribunal/court).

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The assessment is done by the Personalsenat. One of the inputs for the assessment is a statement of the president of the court, in which the judge who is assessed works. The result of the assessment can be challenged at the Personalsenat of the superior court level. The assessment is exercised for the second year after the first appointment or the promotion to a new position of the judge in the year after.

- 2.5 Are the presidents in charge of starting a disciplinary procedure against a judge? (If this is the case, please describe briefly the procedure and who is going to make the final decision about the charge).

The procedure and the decision are done by the disciplinary court, which is a chamber at the Higher Courts of Appeal (first instance) and at the Supreme Court (second instance). A disciplinary procedure can be initiated by everybody, which means also presidents of courts can initiated this at the disciplinary court, but it is up to the disciplinary court if a procedure is started or not.

- 2.6 Can, and under which circumstances, the presidents fire a judge or a court employee?  
Yes this is possible but it depends on the legal position of the employee.

- 2.7 Which is the procedure of assigning cases to judges? Is there place for discretion of president of the court in this procedure? If yes, is it regulated by law or other kind of regulation?

The assigning of cases is done by the Personalsenat (see above), which on the one hand adopts a general rule of assigning procedure for incoming cases for one year in advance and decides on conflict of jurisdiction between the judges within a court.

2.8 Can presidents set priorities in the handling of the cases (e.g. family cases must be dealt with before contracts)?

No, this is not possible and seen as an infringement of independence.

2.9 Which are the circumstances that may allow presidents to retrieve cases from judges and re-assign them? Presidents don't have such a possibility

2.10 Do presidents decide over the composition of court's sections/division and over the composition of judges' panel?

No this is task of the Personalsenat-

2.11 Do presidents select and appoint judges who may coordinate/head a section/division of the court?

No except they can choose judges , who assist in the management of court.

2.12 Can presidents delegate their functions to other judges?

Yes, they can

2.13 Are presidents supported in their tasks and by whom? Of course there is staff to assist the presidents, and there are vice-presidents and other judges who could be involved in the management of the court

2.14 Have presidents any supervision on the judgments delivered by other judges of the court? There is no supervision, but presidents of court follow the cases, which are appealed and the outcome of the appeals. If there are observations which may be of general interest, they inform the other judges, the also convene meetings of the judges of the court were questions of general interest could be discussed.

2.15 Are presidents in charge of the uniform application of the law within the court, and in which way they carry out this function? This is no official task of the presidents but by using the means mentioned in 2.14. above, they contribute to uniform application of the law.

2.16 Do presidents set productivity and/or timeframes targets for their court?

No this would be seen as an infringement of independence.

2.17 Do presidents set productivity or timeframes targets for each judge or court staff?

No . But length of proceedings is monitored by the president and if the president has the feeling that it is too long, the president may ask the judge about the reasons and what next steps are foreseen.

2.18 Do presidents monitor the length of judicial proceedings and what kind of actions they can undertake to improve the pace of litigation?

Yes they do. If necessary they can speak with the judge without intervening in the merits of the case, they can report to the disciplinary court if they consider that the judges does not fulfil the duty to spend the possible energy to perform his duties.

2.19 What are the functions of presidents as far as the management of judges and court staff is concerned (i.e. setting working hours, authorising holidays, moving staff from one function to another, allowing extra-judicial activities etc.)?

Working hours for the staff are set out in the law. Judges have not working hours. Holidays for judges and staff are authorised by the president regarding the time of the holidays, the number is fixed by law. The possibility to move staff around is very limited due to very narrow regulations by the ministry of justice but even more by the minister of finance and the minister for public servants. There is some small discretion by the presidents of the Higher Courts of Appeal within their district, but presidents of first and second level courts have almost no possibilities.

2.20 Have presidents any discretion in setting the remuneration (i.e. financial incentives) or other fringe benefits (please explain which one) of judges or court staff?

No, only once a year very small rewards can be given to court staff, who die special extra-work in the previous year.

2.21 Which tasks presidents have in the appropriation of the court budget among the different courts?

There is no influence in the drafting of the budget. Regarding the allocation of the budget there are strong central provisions by the ministry of justice and the ministry of finance. The presidents of the Higher Courts of Appeal have some discretion, the presidents of first and second level courts almost none.

2.22 Which tasks and how much discretion presidents have in the management of the court budget within the court? Also very limited (see above 2.22)

2.23 Do presidents manage the court premises and layout?

Some decisions are delegated to the Presidents of the Higher Courts of Appeal, central decisions are in the competence of the ministry. Presidents of the first and second level court have very few possibilities of decision.

2.24 Do presidents manage information and communication technology implemented in the court? The decisions regarding the IT use are very much centralised in the ministry of justice.

2.25 Do presidents have some autonomy about what kind of information and communication technology tools/application should be implemented in their court?

No not at all

2.26 Are presidents really the managers of the court or they are supported in their functions by a board (please describe the composition) or by a court manager/administrative director?

There are judges (vice-presidents and others, whom they could delegate certain tasks, there is a director of the court who is the head of the staff. Mostly this director is in charge of the routine tasks. But he is under the supervision of the president and has to follow his instructions.

2.27 If applicable, please briefly describe the functions and the background of the court manager in comparison to the president of the court.

See 2.26

2.28 Please describe briefly the court manager selection process, if they serve for a limited term, and if the president can remove the court manager.

It is a special position for clerks. They are appointed by the minister of justice. The selection is done by the presidents of the Higher Courts of Appeal, in most cases the

president of the court concerned is asked for his opinion. The term is not limited and the president of the court cannot remove him/her.

2.29 Are presidents the "interface" with the media, and are they trained to do it?

The regulations on the relations between the courts and the media, see that at all second and third level courts and on large first level courts spokespersons are installed, who are judges, who are especially trained. It is proposed that this should not be the presidents of courts themselves because these could cause a conflict of interest.

2.30 Would you please briefly describe what kind of relations there are between presidents of the courts (first instance and appeal) and the president of the Supreme Court (court of last resort)? The president of the Supreme Court is not included in the hierarchy of presidents of courts. In his management tasks he is subordinated to the minister of justice like the presidents of the Higher Courts of Appeal. He cannot give orders to the presidents of lower level courts. Nevertheless the president of the Supreme Court is seen as the person who represents the judiciary of the ordinary courts and in the states protocol he together with the President of the Supreme Administrative Court and the President of the Constitutional Courts stands above the minister.

2.31 Are there other tasks of presidents of the courts in your country, which were not mentioned before?

2.32 Please add any critical issue or further information that you consider relevant for this section. -----

### 3. Accountability and discipline

3.1 What kind of accountability mechanisms (e.g. reporting, auditing, etc.) are in place for the presidents, and before which authority (e.g. Judicial Council, Ministry of justice, Supreme Court, internal board etc.)?

There is a lot of statistics and presidents of court should analyse it and try to improve the underlying situation

3.2 Do presidents have a different disciplinary responsibility in comparison to the judges? In principle no: they have to face the same disciplinary offences. A special aspect may be that due to the fact that regarding their management functions in the hierarchical chain to the minister, not obeying an order of a superior may be a disciplinary offence.

3.3 Is there any special immunity for presidents?  
No, there is no immunity for judges at all.

3.4 Which criteria are used for the evaluation of presidents, how often, and by whom?  
There is no special evaluation for presidents. The normal rules for judges apply.

3.5 Which are the consequences of such evaluation (e.g. ranking, promotion, admonition, removal, salary increase, any other consequence, etc.)?  
No difference to other judges

3.6 Please add any critical issue or further information that you consider relevant for this section.



**4. Appointment, tasks, functions, relations of the president of the Supreme Court** (Chief Justice of the court of last resort e.g. court of cassation; please note that you do not have to describe the position of president of the Constitutional Court / here and after referred as president of the Supreme Court).

4.1 Who appoints (e.g. Judicial Council, Ministry of Justice, Parliament, etc.) the president of the Supreme Court?

The President of the Supreme Court is appointed by the President of the Republic. Like it is the case with all appointments he has to do, he needs a proposal of the government. Regarding the President of the Supreme Court and the Vice-Presidents of the Supreme Court there are no proposals of a Personalsenat like it is the case with other appointments of judges.

4.2 Please describe briefly the selection procedure.

Like all other positions of a judge (see above 1.2.)

4.3 What kind of qualifications (e.g. specific training in management, previous specific judicial position, seniority, etc.) are required to become president of the Supreme Court? (Please also explain if training is mandatory or on a voluntary basis, if any training is necessary at all, and how much it affects the choice of the president).

The management skills are not so important for the president of the Supreme Court, because he has to manage his court only. It is more important that he is an excellent jurist with some reputation and experience.

4.4 Does the president get a "confidence vote" (after or before their appointment) from other judges of the Supreme Court?

No

4.5 How long is term of office of the president of the Supreme Court (please explain if there are limitations)? The same like all other judges till retirement (age of 65 years)

4.6 Can their mandate be renewed, and what is the process (e.g. evaluation of the first term served and then renewal)? No see 4.5.

4.7 What are the tasks and functions of the president of the Supreme Court in comparison to the other courts' presidents? (in particular, please explain the role of the president, if any, in relation to: Judicial Council, Ministry of Justice, legislative power, budget of the judiciary). No such tasks

4.8 Please add any critical issue or further information that you consider relevant for this section.

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